

MARTHA N. JACKSON

IBLA 75-44

Decided November 27, 1974

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, denying reinstatement of terminated oil and gas lease NM 18211.

Affirmed.

1. Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rentals on time can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

APPEARANCES: Martha N. Jackson, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Martha N. Jackson appeals from a decision of the New Mexico State Office, Bureau of Land Management, dated July 3, 1974, which refused to reinstate terminated oil and gas lease NM 18211.

The Act of July 29, 1954, 68 Stat. 585, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease will terminate by operation of law if the annual rental is not paid on or before the anniversary date of the lease. Section 31 of the Mineral Leasing Act was further amended by the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(c) (1970), to allow reinstatement of a terminated lease upon a lessee's timely petition. The lessee, however, must show that the failure to pay on time "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." Id. The State Office, in denying the lessee's petition to reinstate the lease, found that she had not satisfied either of the requirements for reinstatement.

The rental payment due date was May 1, 1974, a Wednesday. Appellant's envelope containing the payment was sent by airmail.

and postmarked United States Postal Service, Texas, on May 1, 1974. The New Mexico State Office received the payment on May 2, 1974.

[1] A lessee is not "reasonably diligent" unless she shows that her rental payment was sent sufficiently far in advance of the anniversary date to account for normal delays in the mails. 43 CFR 3108.2-1(c)(2). A letter mailed on the anniversary date is not entitled to reinstatement. E.g., Heirs of John W. Firth, 17 IBLA 125, 126 (1974); Louis Samuel, 8 IBLA 268, 277-78 (1972). Appellant asserts that although the envelope was postmarked on May 1, 1974, she personally deposited the envelope in the mail on April 26, 1974. We find that this statement is not credible. The case file record contains a letter from the appellant to the New Mexico State Office dated May 29, 1974. In that letter appellant stated:

I depended on someone besides me to mail the letter to you as I was going to be out of town.
Apparently, they waited until the 1st day of May to mail it.

Because of the contradiction in appellant's two statements, we cannot make a finding that the letter was not mailed on the day it was postmarked. In the absence of credible evidence to the contrary we will assume that a letter is mailed on the date it is postmarked. See Minntex Oil Co., 17 IBLA 16, 18 (1974); Mary White, 13 IBLA 363, 364 (1973).

Appellant does not contend nor do we find any evidence that her failure to make the payment on time was justifiable.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur.

Martin Ritvo
Administrative Judge

Frederick Fishman
Administrative Judge

